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LOS ANGELES TIMES COMMUNICATIONS LLC,
9 CALIFORNIA NEWSPAPERS PARTNERSHIP L.P., THE
CENTER FOR INVESTIGATIVE REPORTING, and
10 CALIFORNIA NEWS PUBLISHERS ASSOCIATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 LOS ANGELES POLICE PROTECTIVE
14 LEAGUE,

15 Petitioner,

16 v.

17 CITY OF LOS ANGELES, a municipal
corporation; MICHEL R. MOORE, Chief of
Police for the City of Los Angeles, and DOES
18 1 through 20, inclusive,

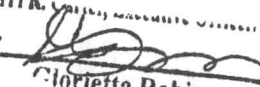
19 Respondents.

20 FIRST AMENDMENT COALITION, a
21 California non-profit, public benefit
corporation; LOS ANGELES TIMES
22 COMMUNICATIONS LLC, a Delaware
limited liability company; CALIFORNIA
23 NEWSPAPERS PARTNERSHIP L.P., a
Delaware limited partnership; THE CENTER
24 FOR INVESTIGATIVE REPORTING,
California non-profit, public benefit
25 corporation; and CALIFORNIA NEWS
PUBLISHERS ASSOCIATION, an association
26 of California news organizations,

27 Intervenors.
28

FILED
Superior Court Of California
County Of Los Angeles

FEB 06 2019

Sherrin K. ...
By  Deputy
Clorietta Robinson

Case No. 18STCP03495

**INTERVENORS' COMPLAINT IN
INTERVENTION**

Dept.: 85

[Petition Filed: December 31, 2018]

1 Real Parties in Interest and Proposed Intervenor First Amendment Coalition ("FAC"), Los
2 Angeles Times Communications LLC ("LAT"), California Newspapers Partnership L.P. (doing
3 business as the Southern California Newspaper Group or SCNG ("SCNG") and Bay Area News
4 Group ("BANG")), The Center for Investigative Reporting, Inc. ("CIR"), and California News
5 Publishers Association ("CNPA") (collectively, "Intervenors") file this Complaint in Intervention
6 and hereby intervene in this action, alleging as follows:

7 INTRODUCTION

8 1. In 2018, the California Legislature passed and Governor Jerry Brown subsequently
9 signed into law California Senate Bill 1421 ("SB 1421"), enacted as Chapter 988 of the 2017-2018
10 Regular Session. SB 1421, which became effective January 1, 2019, amended two sections of the
11 Penal Code concerning law enforcement personnel records (Sections 832.7 and 832.8). The new
12 law makes records relating to incidents of (A) officer involved shootings and serious uses of force,
13 (B) sustained findings of sexual assault, and (C) sustained findings of serious dishonesty, subject
14 to public disclosure through the California Public Records Act (the "CPRA"). Specifically, the
15 statute now provides:

16 Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code,
17 or any other law, *the following peace officer or custodial officer personnel records* and
18 records maintained by any state or local agency *shall not be confidential and shall be*
made available for public inspection pursuant to the California Public Records Act ...:

19 (A) A record relating to the report, investigation, or findings of *any* of the following:

20 (i) An incident involving the discharge of a firearm at a person by a peace officer or
custodial officer.

21 (ii) An incident in which the use of force by a peace officer or custodial officer
22 against a person resulted in death, or in great bodily injury.

23 (B) (i) *Any* record relating to an incident in which a sustained finding was made ... that a
peace officer or custodial officer engaged in sexual assault involving a member of the
24 public. ...

25 (C) *Any* record relating to an incident in which a sustained finding was made ... of
dishonesty by a peace officer or custodial officer directly relating to..." certain things
26 "including, but not limited to, *any* sustained finding of perjury, false statements, filing
false reports, destruction, falsifying, or concealing of evidence.

27 (Penal Code, § 832.7, subd. (b)(1) [emphasis added].) Section 832.7(b)(2) further specifies:
28

1 Records that shall be released pursuant to this subdivision include **all** investigative
2 reports; photographic, audio, and video evidence; transcripts or recordings of
3 interviews; autopsy reports; **all** materials compiled and presented for review to the
4 district attorney or to any person or body charged with determining whether to file
5 criminal charges against an officer in connection with an incident, or whether the
6 officer's action was consistent with law and agency policy for purposes of
7 discipline or administrative action, or what discipline to impose or corrective action
8 to take; documents setting forth findings or recommended findings; and copies of
9 disciplinary records relating to the incident, including any letters of intent to
10 impose discipline, any documents reflecting modifications of discipline due to the
11 Skelly or grievance process, and letters indicating final imposition of discipline or
12 other documentation reflecting implementation of corrective action.

13 (Penal Code, § 832.7, subd. (b)(2) [emphasis added].)

14 2. For some years prior to the enactment of SB 1421, such information was available
15 through discovery in civil or criminal litigation, pursuant to a motion made in accordance with
16 Penal Code section 1043 but not pursuant to a CPRA request.

17 3. On December 31, 2018, three months after SB 1421 was enacted but just one day
18 before the bill was scheduled to go into effect, Petitioner Los Angeles Police Protective League
19 ("Petitioner" or "LAPPL") filed a Verified Petition for Writ of Mandate, Alternative Writ of
20 Mandate, and Request for Stay (the "Petition") in this Court. In its Petition, LAPPL contended
21 that SB 1421 is "prospective" only, which means, according to the LAPPL, that the law does not
22 apply to "peace officer personnel records and information regarding incidents or reflecting
23 conduct occurring prior to January 1, 2019," (referred to herein as "pre-2019 records").
24 Furthermore, LAPPL contends that applying SB 1421 to pre-2019 records is an impermissible
25 "retroactive" application of the law. Accordingly, LAPPL sought and was granted an alternative
26 writ of mandate and stay order directing Respondents City of Los Angeles ("Los Angeles" or
27 "City"); Michel R. Moore, Chief of Police for the City of Los Angeles ("Moore"); and their
28 agents, employees, and representatives ("Doe Respondents" and together with City and Moore,
collectively "Respondents") to refrain from "retroactively" enforcing or applying SB 1421 by
releasing any records relating to conduct occurring prior to January 1, 2019 that are otherwise
subject to public disclosure under the CPRA, or to show cause why they have not done so.

4. LAPPL's interpretation of SB 1421 is incorrect. First, the plain language of
California Penal Code section 832.7 and the legislative history of SB 1421 require the application

1 of Penal Code sections 832.7 and 832.7, as amended by SB 1421 (herein after “Sections 832.7 and
2 832.8”), to all records regardless of date. Second, applying Sections 832.7 and 832.8 to pre-2019
3 records does not constitute an impermissible “retroactive” application of the law.

4 5. Intervenors have a direct interest in these proceedings and their outcome. FAC has
5 an interest as a result of its support for the passage of SB 1421 and its mission to promote
6 government accountability, prevent unnecessary governmental secrecy, and ensure enforcement of
7 open records laws for the benefit of the public. CNPA has a similar interest, as a principal
8 advocate for passage of SB 1421 and as an organization created to champion the ideals of a free
9 press in our democratic society and to promote the quality and economic health of California news
10 publishers. The public has a particularly strong interest in enforcing its right to access to the
11 records covered by SB 1421 because they concern the conduct of law enforcement officers. (See
12 *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 74 (*LBPOA*)
13 [explaining that in cases concerning officer-involved shootings, “the public’s interest in the
14 conduct of its peace officers is particularly great because such shootings often lead to severe injury
15 or death” and the balance of interests therefore “tips strongly in favor of identity disclosure and
16 against the personal privacy interests of the officers involved”].) LAT, SCNG, BANG and CIR,
17 as news media organizations committed to reporting on matters of great public interest, have an
18 interest in their ability to access this information so that they may accurately report on instances of
19 police-involved shootings, use of force, and misconduct, and thereby serve the public interest in
20 ensuring public oversight and accountability of law enforcement.

21 6. Moreover, FAC, LAT, SCNG, and CIR all submitted California Public Records
22 Act (“CPRA”) requests to Respondents seeking records containing information subject to
23 disclosure under Penal Code section 832.7(b) (as amended by SB 1421). These requests have
24 been denied citing the Court’s December 31, 2018, temporary stay order prohibiting the disclosure
25 of pre-2019 records.

26 7. Intervenors intervene in order to oppose the Petition and to request that this Court
27 find and determine that Sections 832.7 and 832.8 apply pre-2019 records.
28

1 **THE PARTIES**

2 8. FAC is a nonprofit public benefit corporation organized under the laws of
3 California. Since FAC was established in April 1988, and at all times relevant to this Complaint
4 in Intervention, one of FAC's primary purposes has been the advancement of the public's right to
5 participate in government and to have access to information regarding the conduct of the people's
6 business. FAC has advanced this purpose by working to improve governmental compliance with
7 state and federal open government laws. The public has a particularly strong interest in disclosure
8 of the type of records that SB 1421 addresses—records concerning use of deadly or serious force
9 or regarding serious misconduct by law enforcement officers. (See *LBPOA*, *supra*, 59 Cal.4th at
10 p. 74.) FAC is beneficially interested in ensuring that public agencies throughout the state,
11 including the City of Los Angeles and LAPD, faithfully comply with their legal duties to disclose
12 such records under the new SB 1421, as well as under Section 3 of Article I of the California
13 Constitution and California common law. As explained further herein, FAC submitted a CPRA
14 request to Respondents seeking pre-2019 records subject to disclosure under Penal Code section
15 832.7(b) (as amended by SB 1421). Respondents denied FAC's request citing the Court's
16 December 31, 2018, temporary stay order prohibiting the disclosure of pre-2019 records.

17 9. CNPA is a nonprofit public benefit corporation organized under the laws of
18 California. For over 130 years and at all times relevant to this Complaint in Intervention, CNPA's
19 mission has been to champion the ideals of a free press in our democratic society and protect the
20 interests of newspapers throughout the state, from the smallest weekly to the largest metropolitan
21 daily. Toward this end, CNPA was a co-sponsor of SB 1421, working closely with Senator
22 Skinner, the author of the bill, to draft amendments, negotiate language with stakeholders and
23 helping to shepherd the bill as it progressed through the legislative process. CNPA members use
24 the CPRA on a daily basis to access and provide to readers information about government actions
25 and decisions made by government officials in their communities. CNPA members also use this
26 information to independently investigate the conduct of agencies to identify instances of potential
27 malfeasance or corruption by government officials. Since most members of the public are unable
28 to engage in these activities themselves, CNPA members serve in the role of a public trust. In

1 light of recent developments where the relationship between law enforcement and members of the
2 public has been the focus of vigorous public discussion, the public and newspapers have an
3 exceedingly strong interest in disclosure of records concerning serious, sustained findings of
4 misconduct by law enforcement officers. CNPA has a significant interest in ensuring that the
5 intent of SB 1421 is faithfully executed by public agencies throughout the state and the public's
6 right of access to the information governed by SB 1421 as well as under Section 3 of Article I of
7 the California Constitution and California common law is not diminished.

8 10. LAT is the largest daily newspaper based in California. LAT's popular news and
9 information website, www.latimes.com, attracts a national audience. In order to ensure its ability
10 to effectively report on matters of vital public interest, LAT regularly joins litigation defending the
11 public's rights of access to government records and meetings. Before the Supreme Court of
12 California, LAT vindicated the public's rights of access to the names of police officers
13 (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278
14 (*POST*)) and the names of most officers involved in shootings in California (*LBPOA, supra*, 59
15 Cal.4th 59). In recent years, LAT also ensured public access to a consultant's report on the
16 shooting by Pasadena police of an unarmed teenager (*Pasadena Police Officers Assn. v. City of*
17 *Pasadena* (2015) 240 Cal.App.4th 268) and the names of officers who pepper sprayed student
18 protesters at the University of California, Davis (*Federated University Police Officers Assn. v.*
19 *Superior Court* (2013) 218 Cal.App.4th 18). As part of these cases, the Supreme Court of
20 California has recognized that the "public's interest in the qualifications and conduct of peace
21 officers is substantial" (*POST, supra*, 42 Cal.4th at p. 297-299) and that "officers hold one of the
22 most powerful positions in our society; our dependence on them is high and the potential for abuse
23 of power is far from insignificant" (*LBPOA, supra*, 59 Cal.4th at p. 73) (internal citation
24 omitted)). These statements have particular resonance in this litigation concerning access to police
25 disciplinary records in the possession of the City of Los Angeles and the LAPD. Because LAT
26 reports on the City of Los Angeles, LAT has a concrete interest in ensuring public access to all
27 disclosable disciplinary records controlled by Respondents, including pre-2019 records. As
28 explained further herein, LAT submitted CPRA requests to Respondents seeking pre-2019 records

1 subject to disclosure under Penal Code section 832.7(b) (as amended by SB 1421). Respondents
2 denied LAT's requests citing the Court's December 31, 2018, temporary stay order prohibiting the
3 disclosure of pre-2019 records.

4 11. The California Newspapers Partnership is a Delaware Limited Partnership, which
5 operates both the Bay Area News Group ("BANG") and the Southern California News Group
6 ("SCNG"). BANG is a news organization that publishes two daily newspapers, The Mercury
7 News, based in San Jose, and the East Bay Times, based in Oakland and Walnut Creek, as well as
8 more than a dozen weekly newspapers. The organization's websites, mercurynews.com and
9 eastbaytimes.com, attract more than half a million visitors daily. BANG regularly pursues
10 litigation defending the public's right of access to government records and meetings. Its work
11 relies heavily on the use of the California Public Records Act, and it has a longstanding interest in
12 putting a spotlight on the inner workings of law enforcement, having produced the award-winning
13 series Tainted Trials, Stolen Justice, which examined misconduct in the justice system in Santa
14 Clara County. BANG, as a major news organization in California, has a strong interest in
15 obtaining information made public by SB 1421. On January 6, the news organization published
16 one of the first stories in the state using records made available by the new law. BANG's
17 reporting detailed the history of a Burlingame police officer who sought to force women he
18 arrested to trade sex for leniency. After the publication of the article, the San Mateo District
19 Attorney expressed surprise that the officer had been accused of multiple incidents of such
20 behavior, saying the DA's office had been informed of only one, and announced it would consider
21 reopening an earlier investigation of the officer. Given this, BANG has a direct interest in
22 bringing similar stories to light in Los Angeles.

23 12. SCNG publishes eleven daily newspapers, 20 weeklies and four magazines in one
24 of the world's largest metro areas. From Long Beach to the San Fernando and San Gabriel
25 Valleys, to the beaches of Orange County to the vast Inland Empire, SCNG's newspapers,
26 including The Orange County Register, The Press-Enterprise, Los Angeles Daily News and Long
27 Beach Press-Telegram, have a long and well-established history of service to their communities.
28 Each of the newspapers comprising the Southern California News Group maintains a large and

1 loyal subscriber base of readers who are well-served by SCNG's diligent public interest and
2 investigative journalism. SCNG's publications have been recognized by state and national
3 organizations for breaking news, public service, and investigative reporting, including a Pulitzer
4 prize for local reporting for the Daily Breeze in 2015. As explained further herein, SCNG
5 submitted a CPRA request to Respondents seeking pre-2019 records subject to disclosure under
6 Penal Code section 832.7(b) (as amended by SB 1421). Respondents denied SCNG's request
7 citing the Court's December 31, 2018, temporary stay order prohibiting the disclosure of pre-2019
8 records.

9 13. CIR, a California non-profit, public benefit corporation founded in 1977, is the
10 nation's first nonprofit investigative newsroom. CIR produces investigative journalism for its
11 website Reveal, <https://www.revealnews.org>, the Reveal national public radio show and podcast,
12 and various documentary projects. CIR is deeply committed to ensuring that the public's right to
13 know is well-protected. It consistently pursues this mission by reporting on matters of public
14 importance, regularly using public records laws around the country to accomplish its reporting,
15 and joining initiatives that support the public's right. CIR is therefore squarely interested in
16 ensuring that SB 1421 is correctly applied by requiring that public agencies follow through on
17 their obligations to disclose information. More specifically as to the subject matter of the statute,
18 CIR regularly reports on information related to police misconduct, law enforcement's use of
19 deadly force, uneven application of the law by police, as well as internal corruption, all of which
20 may become more transparent under the application of this new law. As explained further herein,
21 CIR submitted a CPRA request to Respondents seeking pre-2019 records subject to disclosure
22 under Penal Code section 832.7(b) (as amended by SB 1421). Respondents have not yet
23 responded to CIR's request.

24 14. LAPPL alleges in the Petition that it is an employee organization as defined in
25 Government Code section 3500 et seq., recognized to represent all police officers, police
26 detectives, sergeants and lieutenants employed by the City with regard to all matters concerning
27 wages, hours and working conditions. LAPPL further alleges that its represented employees are
28 peace officers as defined in Penal Code sections 830.1.

15. The City is a municipal corporation operating under the laws of the State of California. LAPPL alleges in the Petition that the City was, at all relevant times, a local employing agency within the meaning of Penal Code section 832.5 et seq. maintaining peace officer personnel information, as well as a local agency within the meaning of the CPRA, Government Code section 6252.

16. Moore is, and at all relevant times was, the Chief of Police for the City of Los Angeles. LAPPL alleges in the Petition that Moore is charged with the general supervision, administration and management of the LAPD.

17. LAPPL alleges that Doe Respondents were at all relevant times the agents, servants and employees of Respondent City acting within the scope of their authority with the permission and consent of the City.

JURISDICTION

18. This Court has original jurisdiction over this matter pursuant to the California Constitution article VI, section 10 and California Code of Civil Procedure sections 387 and 1085.

FACTUAL ALLEGATIONS

19. Recognizing the public’s right to information about serious police misconduct, officer-involved shootings, and other serious uses of force by law enforcement officers, in 2018 the California Legislature passed, and former Governor Jerry Brown signed into law SB 1421. The new law expands access to certain records by making records relating to incidents of (A) officer involved shootings and serious uses of force, (B) sustained findings of sexual assault, and (C) sustained findings of serious dishonesty, subject to public disclosure through the California Public Records Act (the “CPRA”). Specifically, the statute now provides:

Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, ***the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection*** pursuant to the California Public Records Act ...:

(A) A record relating to the report, investigation, or findings of *any* of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

1 (ii) An incident in which the use of force by a peace officer or custodial officer
2 against a person resulted in death, or in great bodily injury.

3 (B) (i) *Any* record relating to an incident in which a sustained finding was made ... that a
4 peace officer or custodial officer engaged in sexual assault involving a member of the
5 public. ...

6 (C) *Any* record relating to an incident in which a sustained finding was made ... of
7 dishonesty by a peace officer or custodial officer directly relating to..." certain things
8 "including, but not limited to, *any* sustained finding of perjury, false statements, filing
9 false reports, destruction, falsifying, or concealing of evidence.

10 (Penal Code, § 832.7, subd. (b)(1) [emphasis added].) Section 832.7(b)(2) further specifies:

11 Records that shall be released pursuant to this subdivision include *all* investigative
12 reports; photographic, audio, and video evidence; transcripts or recordings of
13 interviews; autopsy reports; *all* materials compiled and presented for review to the
14 district attorney or to any person or body charged with determining whether to file
15 criminal charges against an officer in connection with an incident, or whether the
16 officer's action was consistent with law and agency policy for purposes of
17 discipline or administrative action, or what discipline to impose or corrective action
18 to take; documents setting forth findings or recommended findings; and copies of
19 disciplinary records relating to the incident, including any letters of intent to
20 impose discipline, any documents reflecting modifications of discipline due to the
21 Skelly or grievance process, and letters indicating final imposition of discipline or
22 other documentation reflecting implementation of corrective action.

23 (Penal Code, § 832.7, subd. (b)(2) [emphasis added].)

24 20. The declaration of intent in SB 1421 reflects the Legislature's findings that the
25 public has a particularly strong interest in disclosure of records concerning police misconduct and
26 officer-involved shootings:

27 (a) Peace officers help to provide one of our state's most fundamental
28 government services. To empower peace officers to fulfill their
mission, the people of California vest them with extraordinary authority
— the powers to detain, search, arrest, and use deadly force. Our society
depends on peace officers' faithful exercise of that authority. Misuse of
that authority can lead to grave constitutional violations, harms to
liberty and the inherent sanctity of human life, as well as significant
public unrest.

(b) The public has a right to know all about serious police misconduct, as
well as about officer-involved shootings and other serious uses of force.
Concealing crucial public safety matters such as officer violations of
citizens' rights, or inquiries into deadly use of force incidents,
undercuts the public's faith in the legitimacy of law enforcement,
makes it harder for tens of thousands of hardworking peace officers to
do their jobs, and endangers public safety.

(SB 1421, § 1.)

1 21. SB 1421 also provides limited exceptions to public disclosure. It excepts from
2 disclosure certain personal data including home addresses, telephone numbers, and allows
3 government agencies to redact the identities of officers' family members. Government agencies
4 may also withhold records when disclosure would pose a significant danger to the officer in
5 question or hinder an ongoing investigation.

6 22. SB 1421 was passed on August 31, 2018, signed by former Governor Brown on
7 September 30, 2018, and enacted as Chapter 988 of the 2017-2018 Regular Session. It amended
8 Penal Code sections 832.7 and 832.8 and became effective on January 1, 2019.

9 23. On December 31, 2018, LAPPL filed a petition with this Court (the "Petition")
10 seeking a determination that SB 1421 and Penal Code sections 832.7 and 832.8, as amended by
11 SB 1421, is not applicable to "peace officer personnel records and information regarding incidents
12 or reflecting conduct occurring prior to January 1, 2019," and a preemptory writ of mandate
13 prohibiting the disclosure of such records. LAPPL also asked the Court to issue an alternative writ
14 of mandate and an immediate order staying or enjoining any release of pre-2019 records during
15 the pendency of these proceedings, which the Court granted on December 31, 2018. In its
16 Petition, LAPPL alleged that Moore, in his official capacity, wrote a letter to Senator Nancy
17 Skinner on December 3, 2018, expressing concern that SB 1421 might be interpreted as
18 "retroactive," and if applied in a retroactive manner would impose an unreasonable burden on
19 LAPD. LAPPL also alleged that the LAPD had confirmed in a letter dated December 26, 2018,
20 that absent a stay or other ruling from the California Supreme Court or another court of competent
21 jurisdiction, it intended to apply SB 1421 to pre-2019 records by making the following types of
22 records, including pre-2019 records, available by public records request beginning on January 1,
23 2019: records regarding officer-involved shootings, records regarding officers' use of force
24 resulting in death or great bodily injury, and sustained findings of sexual assault or dishonesty
25 committed by peace officers.

26 24. LAPPL's Petition contends that police officers hold a protected right to privacy in
27 the information contained in their pre-2019 personnel files and agency records regarding pre-2019
28 incidents despite the enactment of SB 1421. LAPPL further contends that SB 1421 does not

1 contain any express provision or language “requiring retroactivity” or any clear indication that the
2 Legislature intended the statute to operate “retroactively,” which LAPPL defines as application to
3 peace officer personnel records and information which arose out of incidents involving peace
4 officer conduct occurring prior to January 1, 2019. LAPPL therefore contends that the Court
5 should hold that SB 1421 does not permit disclosure of “peace officer personnel records and
6 information regarding incidents or reflecting conduct occurring prior to January 1, 2019” under the
7 CPRA.

8 25. Intervenor has strong and direct interests in intervening in this proceeding to
9 prevent LAPPL from obtaining a final writ of mandate by this Court that would prevent the
10 disclosure of information subject to SB 1421 by a CPRA request, including records and
11 information regarding incidents or reflecting conduct occurring prior to January 1, 2019, and to
12 ensure that the Respondents and their agents appropriately enforce and comply with Sections
13 832.7 and 832.8.

14 26. FAC is a nonprofit public benefit corporation dedicated to advancing the public’s
15 right to participate in government and access information regarding the conduct of the people’s
16 business. The public has a particularly strong interest in accessing public records concerning
17 serious misconduct and uses of force by law enforcement officers, and FAC is interested in
18 promoting laws and policies that increase public access to such information.

19 27. FAC was active in supporting SB 1421. On April 9, 2018, FAC sent an open letter
20 to Senator Nancy Skinner, the bill’s author, expressing its strong support of SB 1421. That same
21 day, FAC posted the letter on its website, urging others to also support the bill. FAC is listed in
22 the official legislative analyses among the organizations that publicly supported SB 1421. FAC’s
23 support of SB 1421 reflects its mission to advance transparency and accountability of government
24 and government employees, including law enforcement officers, and to prevent government
25 secrecy and censorship. Moreover, on January 10, 2019, FAC submitted a CPRA request, through
26 the LAPD’s online public records request portal, by email and by letter delivered via U.S. mail to
27 Moore, for LAPD records from 2017 and 2018 that contain information subject to SB 1421. Todd
28 Gaydowski of the City Clerk’s Office responded to this request by email on January 10, 2019,

1 claiming that the 2017 and 2018 police records had not been transferred to the City Records
2 Center yet, and that FAC must submit its request through LAPD's online public records request
3 portal to receive a necessary release of the records from LAPD. As noted, FAC had submitted its
4 request via the online portal. On January 17, 2019, the City responded that it could not provide
5 the requested records because Respondents are prohibited from disclosing or providing any
6 records relating to incidents occurring before January 1, 2019, due to the Court's December 31,
7 2018 temporary stay Order in these proceedings prohibiting the City from applying Penal Code
8 sections 832.7 and 832.8 (as modified by SB 1421) "in any manner which would result in the
9 disclosure or production of peace officer personnel records and information regarding incidents or
10 reflecting conduct occurring prior to January 1, 2019."

11 28. CNPA was a co-sponsor of SB 1421 from its inception. CNPA's arguments in
12 support of SB 1421 are expressly referenced and quoted in the legislative history of the bill. SB
13 1421 provides public access to records vital to the mission of CNPA's members in providing
14 information that is, as the Supreme Court of California has recognized, necessary to inform the
15 public on matters of vital and legitimate public concern. If Penal Code section 832.7 (as amended
16 by SB 1421) is interpreted to prohibit the disclosure of records relating to incidents or conduct
17 before January 1, 2019, this would severely limit CNPA members' ability to investigate and report
18 stories of serious police misconduct, shootings and serious uses of force.

19 29. As a major news organization in California, and as a media organization that
20 regularly reports on the LAPD, LAT has a direct interest in ensuring public access to the
21 information and reports addressed by SB 1421, including records relating to incidents occurring
22 before January 1, 2019, so that it may report on matters of public interest in Los Angeles regarding
23 police misconduct and uses of deadly force by peace officers.

24 30. On January 1, 2019, LAT submitted two CPRA requests to LAPD via email and
25 the City's online portal. One request sought electronic records of incidents subject to SB 1421 for
26 all current and former sworn officers employed by LAPD, and the other request sought letters of
27 discipline from Jan. 1, 2014, through Jan. 1, 2019, for current and former sworn officers employed
28 by LAPD relating to reports, investigations, or findings from incidents covered by SB 1421. On

1 January 10, 2019, the LAPD responded stating that Respondents are prohibited from disclosing or
2 providing any records relating to incidents occurring before January 1, 2019, due to the Court's
3 December 31, 2018 temporary stay Order in these proceedings prohibiting the City from applying
4 Penal Code sections 832.7 and 832.8 (as modified by SB 1421) "in any manner which would
5 result in the disclosure or production of peace officer personnel records and information regarding
6 incidents or reflecting conduct occurring prior to January 1, 2019."

7 31. On January 1, 2019, the LAT also submitted a CPRA request to the Los Angeles
8 Port Police seeking letters of discipline from Jan. 1, 2014, through Jan. 1, 2019, for current and
9 former sworn officers employed by LAPD relating to reports, investigations, or findings from
10 incidents covered by SB 1421. Thomas E. Gazsi, Chief of Police for the Los Angeles Port Police,
11 responded to LAT's CPRA request on January 8, 2019, stating that it was prohibited from
12 disclosing or providing any records relating to incidents occurring before January 1, 2019, due to
13 the Court's December 31, 2018 temporary stay Order in these proceedings prohibiting the City
14 from applying Penal Code sections 832.7 and 832.8 (as modified by SB 1421) "in any manner
15 which would result in the disclosure or production of peace officer personnel records and
16 information regarding incidents or reflecting conduct occurring prior to January 1, 2019."

17 32. As a major news content provider in the five-county Los Angeles metropolitan
18 area, regularly engaged in reporting on LAPD, SCNG has a direct interest in obtaining access to
19 LAPD records addressed by SB 1421, including records relating to incidents occurring before
20 January 1, 2019, so that it can provide readers with the best local news coverage in the Los
21 Angeles area.

22 33. Moreover, SCNG has a direct interest in these proceedings because on January 1,
23 2019, it submitted a CPRA request to LAPD for records of the LAPD officer-involved shootings
24 of Ezell Ford, Elizabeth Tollison, and Eric Rivera, which occurred before January 1, 2019. On
25 January 10, 2019, the LAPD's CPRA Unit responded to SCNG's request via email that it was
26 prohibited from disclosing or providing any records relating to incidents occurring before January
27 1, 2019, due to the Court's December 31, 2018 temporary stay Order in these proceedings
28 prohibiting the City from applying Penal Code sections 832.7 and 832.8 (as modified by SB 1421)

1 “in any manner which would result in the disclosure or production of peace officer personnel
2 records and information regarding incidents or reflecting conduct occurring prior to January 1,
3 2019.”

4 34. As one of the nation’s longest operating and most prominent nonprofit investigative
5 journalism organizations, CIR is dedicated to holding the government accountable and revealing
6 threats to public safety through the dissemination and publication of information and news in the
7 public’s interest. As such, CIR has a strong interest in obtaining access to the information and
8 records addressed under SB 1421 regarding serious police misconduct and use of deadly force by
9 peace officers, including records relating to incidents occurring before January 1, 2019. CIR has a
10 direct interest in ensuring its access to these records so that it can publicly report on these matters
11 of public interest.

12 35. Additionally, CIR has a direct interest in this action because on January 14, 2019,
13 CIR submitted a CPRA request to the LAPD seeking records relating to (1) any incidents in 2018
14 involving the discharge of a firearm at a person by a peace officer or custodial officer; (2) any
15 incidents in 2018 in which the use of force by a peace officer or custodial officer against a person
16 resulted in death or in great bodily injury; and (3) any incidents in 2018 in which a sustained
17 finding was made by any law enforcement agency or oversight agency that a peace officer or
18 custodial officer engaged in sexual assault involving a member of the public. As of the date of
19 this filing, CIR had not received a response from Respondents.

20 36. On January 17, 2019, Intervenor filed an Ex Parte Application for Leave to
21 Intervene, or in the Alternative, for an Order Shortening Time to intervene by noticed motion. On
22 January 18, 2019, the Court heard argument on Intervenor’s Application. The Court denied
23 Intervenor’s request to proceed by noticed motion by instead deciding the Ex Parte Application at
24 the hearing. As to that Application, the Court denied Intervenor’s application to intervene as of
25 right. The Court granted Intervenor’s request for permissive intervention, but ruled that
26 Intervenor could intervene only on two conditions: (1) that they file a joint opposition to
27
28

1 LAPPL's Petition with the ACLU intervenors, and (2) that they may not seek attorneys'
2 fees.¹ (Jan. 18, 2019 Minute Order.)

3 **THE INTERVENORS' HAVE THE RIGHT TO INTERVENE, OR PERMISSIVE**
4 **INTERVENTION IS WARRANTED**

5 37. Intervenors incorporate by reference paragraphs 1 through 36 above.

6 38. Intervenors are entitled to intervene by right, pursuant to Code of Civil Procedure
7 section 387, subdivision (d)(1), because they have an interest relating to the property or transaction
8 that is the subject of the pending Petition, their ability to protect that interest may be impaired or
9 impeded by the disposition of the Petition, their interests are not adequately represented (if they
10 are represented at all) by the existing parties, and the Intervenors' application is timely.

11 39. Intervenors have a direct interest in the subject of this action, because they have a
12 vital interest in ensuring that Respondents faithfully enforce Sections 832.7 and 832.8 by making
13 all public records described in SB 1421, including records relating to incidents occurring before
14 January 1, 2019, available for review by the public through the CPRA. In addition, Intervenors
15 have filed CPRA requests seeking records relating to incidents occurring before January 1, 2019.
16 Intervenors have been denied the requested documents on the basis of the Court's current Stay
17 order.

18 40. One of FAC's missions is advancing the public's right to participate in government
19 and access information regarding the conduct of the people's business, including information
20 regarding serious misconduct and uses of force by LAPD officers. FAC also has a particular
21 interest in ensuring that Respondents enforce and comply with Sections 832.7 and 832.8 because
22 FAC actively supported SB 1421 when the bill was in the California Legislature. As a co-sponsor
23 of SB 1421 and as the principal association serving newspapers throughout the State of California,
24 CNPA also has a direct interest in ensuring appropriate and meaningful application and
25 enforcement of Sections 832.7 and 832.8.

26
27 ¹ Intervenors object to these rulings. Intervenors have removed their request for attorneys'
28 fees from this Complaint in Intervention under protest, and only because they have been required
to do so by the Court. Intervenors reserve all rights to challenge the Court's rulings by appeal or
other appropriate means.

1 41. LAT, SCNG, BANG and CIR each have an interest in ensuring their ability to fully
2 and accurately report on matters of public interest and concern regarding the City of Los Angeles
3 by having access to the information and reports that SB 1421 addresses, including records relating
4 to incidents occurring before January 1, 2019. Moreover, LAT has a demonstrated interest in SB
5 1421 given its involvement in several cases involving the public's right to access information
6 regarding police misconduct and use of deadly force.

7 42. LAT, SCNG, FAC, and CIR further have a direct interest in intervening given their
8 pending and denied requests for access to records, including records relating to incidents occurring
9 before January 1, 2019, subject to disclosure under SB 1421.

10 43. Intervenors' ability to protect these interests will be impaired, and indeed will be
11 largely eviscerated, by an adverse determination of the Petition. If the LAPPL's position is
12 adopted and enforce, Intervenors will be deprived of access to records of great public interest and
13 concern, and will be denied access to records they have already requested.

14 44. Intervenors interests are not and will not be adequately represented by any of the
15 existing parties. Petitioner is pursuing a position and relief directly adverse to those of the
16 Intervenors. Respondents, the City of Los Angeles and Chief of Police Michel Moore, cannot
17 adequately represent Intervenors' interest because their primary objective is to comply with the
18 CPRA, not to vindicate the public's and the press's right of access to government records. In fact,
19 Petitioner's request that SB 1421 apply only to records of conduct occurring after January 1, 2019
20 would reduce the administrative burden on the Respondents, as they would not be required to
21 provide records related to conduct occurring before January 1, 2019 in response to Public Records
22 Act requests. Moreover, in similar actions (including a nearly identical petition brought in the
23 California Supreme Court by counsel for Petitioners on behalf of another law enforcement union),
24 the Respondents have not opposed the petitions. Thus, Respondents interests are not directly
25 opposed to Petitioner's and may even be aligned with Petitioner's. Respondents therefore cannot
26 adequately represent the interests of the Intervenors.

27 45. Finally, Intervenors' request to intervene is and was timely, as described below.
28

1 46. To the extent Intervenor's are not entitled to intervene by right, they should be
2 permitted to intervene pursuant to Code of Civil Procedure section 387, subdivision (d)(2) because
3 they have direct and significant interests in this action, as described in the foregoing paragraphs,
4 their inclusion will not enlarge the scope of this lawsuit, their need to intervene outweighs the
5 current parties' right to litigate on their own terms, and they have made timely application to
6 intervene.

7 47. Intervention by the Intervenor's will not enlarge the scope of this lawsuit, because
8 the only relief sought by the Intervenor's is the denial of the Petition and a determination of the
9 issue presented by the Petition, i.e. whether the amendments enacted by SB 1421 provide the
10 public with a right of access to records of incidents and conduct occurring prior to January 1,
11 2019. Permitting Intervenor's to participate will not inject new factual issues, because the issues
12 presented by the Petition are questions of law, to be determined based on the basis of the language
13 of the statutory amendments and, if necessary, the legislative history of the amendments. In
14 addition, permitting intervention need not delay the proceedings, and Intervenor's seek leave to
15 intervene in a manner that will preserve the briefing and hearing schedule previously established
16 by the Court.

17 48. Intervenor's need to intervene outweighs the current parties' right to litigate on
18 their own terms. Intervenor's seek to enforce and vindicate not only their own rights, but the rights
19 of the public generally to access to the records intended by the Legislature to be made public
20 through the enactment of SB 1421. The records at issue contain information that the California
21 Supreme Court has recognized as being of profound public importance and concern. (*POST*,
22 *supra*, 42 Cal.4th at p. 297-299; *LBPOA*, *supra*, 59 Cal.4th at p. 73.) Moreover, the "terms" on
23 which Petitioner seeks to litigate the question presented the Petition are fundamentally inequitable.
24 It is likely that in the absence of the participation of the Intervenor's the Petition will not be
25 effectively opposed, and thus that a question of profound public concern will be resolved in a
26 proceeding that provides no opportunity for the consideration of opposing authority, evidence, or
27 argument. This is obviously precisely what Petitioner seeks. Its efforts to avoid meaningful
28

1 consideration of the merits of the Petition warrant no consideration in determining whether
2 intervention is warranted.

3 49. Intervention is timely, particularly given that Petitioners provided no notice to the
4 Intervenors of this action, despite the fact that it was filed after some of the present Intervenors
5 had filed a motion for leave to intervene in the Supreme Court action filed by counsel for
6 Petitioner. Intervenors have acted as promptly as possible, have not in any way delayed their
7 effort to intervene, and sought to intervene in a manner that will preserve the briefing and hearing
8 schedule established by the Court.

9 50. Although they had months to pursue the resolution of the question presented by the
10 Petition, Petitioner did not file it until December 31, 2018. Intervenors only learned of LAPPL's
11 Petition on or after January 2, 2019. Opposition briefs were originally due January 22, 2019, and
12 the hearing for LAPPL's Petition is scheduled for February 5, 2019.

13 51. In order to present a noticed motion for leave to intervene in accordance with Code
14 of Civil Procedure section 1005(b), Intervenors would have had to have served and filed all
15 supporting papers seeking leave to intervene by January 11, 2019, only seven court days after
16 learning of LAPPL's petition. Given Intervenors need to coordinate their participation in this
17 application, to engage counsel, and to adequately prepare their papers, an earlier presentation of
18 their application to intervene was not possible. Furthermore, Intervenors' Ex Parte Application
19 sought, in the alternative, that the Court shorten time to hear Intervenor's motion to intervene by
20 noticed motion. The Court denied Intervenors' request to proceed by noticed motion by instead
21 deciding Intervenors' Ex Parte Application to intervene on the merits. (Jan. 18, 2019 Minute
22 Order.) Thus, Intervenor's request to intervene was timely.

23 **THE PETITION SHOULD BE DENIED BECAUSE SB 1421 WAS INTENDED**
24 **TO APPLY TO PRE-2019 RECORDS, AND IT APPLICATION TO THOSE**
RECORDS IS CONSISTENT WITH CALIFORNIA LAW

25 52. Intervenors incorporate by reference paragraphs 1 through 51 above.

26 53. LAPPL contends that SB 1421 cannot and should not apply "retroactively" to
27 records and conduct pre-dating January 1, 2019 because it alleges that peace officers hold a vested
28 right to privacy and confidentiality in this information.

1 54. The plain language of Penal Code sections 832.7 and 832.8, as well as SB 1421 and
2 the CPRA, however, make clear that the law applies to any and all records containing information
3 delineated in SB 1421, regardless of when the records were created or the conduct occurred.

4 55. In addition, the Legislature intended SB 1421 to apply broadly to records and files
5 regarding peace officer conduct regardless of when the conduct occurred or when the records were
6 created. First, the Legislature did not impose any temporal restrictions to the records to which SB
7 1421 applies despite its understanding, as shown in the legislative history, that the CPRA defines
8 records broadly as either subject to access or exempt from disclosure, and without temporal
9 limitation except in the case of Governor's office records. Second, the legislative history shows
10 that the Legislature recognized from the outset that SB 1421 would apply to pre-2019 records and
11 passed it with that understanding. Third, the Legislature passed SB 1421 in the context of public
12 debate regarding access to information on police misconduct and use of force, and the legislative
13 history specifically refers to incidents in which members of the public were thwarted from
14 obtaining meaningful information regarding past incidents and investigations of use of force by
15 police—information that would not be available if the Legislation does not apply to pre-2019
16 records.

17 56. SB 1421 and Sections 832.7 and 832.8, moreover, do not affect any vested rights
18 because peace officers have never had a constitutional or statutory right to maintain the
19 confidentiality of the information regarding use of force or sustained findings of serious
20 misconduct or sexual assault contained in personnel files. Rather than creating an unconditional
21 right of privacy or confidentiality to this information, Sections 832.7 and 832.8, prior to
22 amendment, merely provided procedural protections governing the disclosure of personnel
23 records. Such information has always been subject to disclosure in criminal and civil litigation by
24 way of Evidence Code sections 1043 and 1045. The amendments to Penal Code sections 832.7
25 and 832.8 resulting from the enactment of SB 1421 simply expand procedures that can be utilized
26 to obtain and disclose certain categories of information by allowing disclosure through CPRA
27 requests in addition to litigation discovery requests and orders.

28

1 57. Preventing the application of SB 1421 and Sections 832.7 and 832.8 to records
2 regarding incidents or reflecting conduct occurring prior to January 1, 2019 would severely erode
3 the purpose of SB 1421, which is to promote the public's right to know about all serious police
4 misconduct, officer-involved shootings, and other serious uses of force by police, in contravention
5 of the plain language of the amendments to Sections 832.7 and 832.8 and in contravention of the
6 intent of the Legislature. Thus, LAPPL's Petition is without merit and should be denied.

7 **THE COURT SHOULD MAKE A DETERMINATION THAT THE**
8 **AMENDMENTS ENACTED BY SB 1421 APPLY TO PRE-2019 RECORDS**

9 58. Intervenors incorporate by reference paragraphs 1 through 56 above.

10 59. Intervenors LAT, FAC and SCNG have requested and been denied access to pre-
11 2019 records pursuant to SB 1421 and the CPRA by Respondents, Intervenor CIR has not
12 received any substantive response to its CPRA requests for such documents. The denial of access
13 to these records conflicts with the application of SB 1421 and violates the CPRA. According to
14 Sections 832.7 and 832.8 and the CPRA, all public records containing information regarding
15 officer-involved shootings, uses of deadly force by a peace officer, and sustained findings of
16 sexual assault or serious misconduct by a peace officer must be disclosed upon request, subject to
17 limited exceptions. Intervenors therefore respectfully request that this Court make a determination
18 that SB 1421 and Sections 832.7 and 832.8 apply to pre-2019 records.

19 **RELIEF SOUGHT**

20 WHEREFORE, FAC, LAT, CIR, BANG, SCNG, and CNPA pray for judgment as
21 follows:

- 22 1. For an Order DENYING LAPPL's Petition and refusing to issue the writ of
23 mandate sought by LAPPL;
24 2. For an Order VACATING the stay Ordered by the Court on December 31, 2018;
25 3. For a declarations that SB 1421 and California Penal Code sections 832.7 and
26 832.8, as amended by SB 1421, apply to records created before January 1, 2019 and records
27 regarding incidents or reflecting conduct occurring prior to January 1, 2019;
28

1 4. ~~For costs and attorneys' fees as permitted by Government Code section 6259 or~~
2 ~~Code of Civil Procedure section 1021.5 or as otherwise provided for by law;~~²

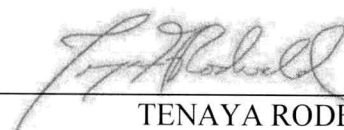
3 5. For judgment accordingly; and

4 6. For costs of suit and for such other relief as the Court deems just.

5 Dated: January 23, 2019

6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

7
8 By



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JAMES CHADWICK
CRISTINA SALVATO
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REPORTING, and CALIFORNIA NEWS
PUBLISHERS ASSOCIATION

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24 ² On January 17, 2019, Intervenors filed an Ex Parte Application for Leave to Intervene,
25 or in the Alternative, for an Order Shortening Time to intervene by noticed motion. On January
26 18, 2019, the Court denied Intervenors' request to proceed by noticed motion by instead deciding
27 the Ex Parte Application at the hearing. As to that Application, the Court denied Intervenors'
28 application to intervene as of right. The Court granted Intervenors' request for permissive
intervention, but ruled that Intervenors could intervene only on two conditions: (1) that they file a
joint opposition to LAPPL's Petition with the ACLU intervenors, and (2) that they may not seek
attorneys' fees. (Jan. 18, 2019 Minute Order.) Intervenors object to these rulings. Intervenors
have removed their request for attorneys' fees under protest, and only because they have been
required to do so by the Court. Intervenors reserve all rights to challenge the Court's rulings by
appeal or other appropriate means.

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Santa Clara, State of California. My business address is 379 Lytton
Avenue, Palo Alto, CA 94301-1479.

5 On January 23, 2019, I served true copies of the following document(s) described as
6 **INTERVENORS' COMPLAINT IN INTERVENTION** on the interested parties in this action
as follows:

7 Richard A. Levine
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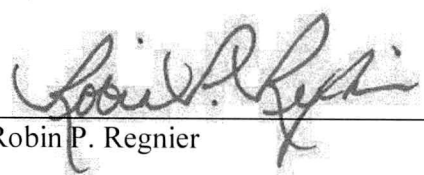
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16 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
17 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
18 document(s) to be sent from e-mail address rregnier@sheppardmullin.com to the persons at the e-
19 mail addresses listed in the Service List. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

20 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

21 Executed on January 23, 2019, at Palo Alto, California.

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24 Robin P. Regnier
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27
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